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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/936,465	04/01/2002	Homaira Naseem	1207SUS03	4143

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EXAMINER

SHOSHO, CALLIE E

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 01/29/2003

6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/936,465

Applicant(s)

NASEEM, HOMAIRA

Examiner

Callie E. Shosho

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Specification

1. This application does not contain an abstract of the disclosure as required by 37

CFR 1.72(b). An abstract on a separate sheet is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 6, and 10 each recite “a quantity of layered magnesium aluminum silicate clay”. The scope of the claim is confusing because it is not clear what is meant by “a quantity”. How much layered magnesium aluminum silicate clay must be used in order to be considered “a quantity”?

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-4, 6-8, and 10-13 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 93/04118.

WO 93/04118 disclose a melt-processible composition comprising (i) thermoplastic polymer such as polyolefin including polyethylene, polypropylene, and ethylene-propylene copolymer as well as poly(styrene)-poly(butadiene)-poly(styrene) and (ii) layered montmorillonite clay having platelets with diameter ranging from 0.005 to 1 micron wherein the composition is used to form molded articles such as containers. There is also disclosed a method for decreasing the gas permeability of the thermoplastic material by using montmorillonite clay as disclosed above (page 5, lines 14-19, page 9, lines 3 and 26-28, page 11, line 36, page 21, lines 3-5, page 26, lines 7 and 10-13, page 29, lines 30-32, page 30, lines 1-2, page 31, lines 27-29, page 33, lines 27-30, page 37, lines 31-37, page 38, line 3, and page 40, lines 27-31).

In light of the above, it is clear that WO 93/04118 anticipates the present claims.

6. Claims 1-4, 6-8, and 10-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Christiani et al. (U.S. 5,747,560).

Christiani et al. disclose a melt-processible composition comprising (i) thermoplastic polymer such as polyolefin including polyethylene, polypropylene, ethylene-propylene copolymer, and ethylene-propylene-diene copolymer as well as poly(styrene)-poly(butadiene)-poly(styrene) and (ii) layered montmorillonite clay having platelets with diameter ranging from

0.005 to 1 micron wherein the composition is used to form molded articles such as containers.

There is also disclosed a method for decreasing the gas permeability of the thermoplastic material by using montmorillonite clay as disclosed above (col.5, lines 20-30, col.7, lines 35-41, col.16, lines 41-44, col.17, lines 48-50, col.18, lines 7 and 21-23, col.20, lines 12-13, col.22, lines 2-3, col.24, lines 15-16, and col.25, lines 35-37).

In light of the above, it is clear that Christiani et al. anticipate the present claims.

7. Claims 1, 4, 6, 8, 10, and 13 are rejected under 35 U.S.C. 102(a) as being anticipated by WO 99/03914.

WO 99/03914 disclose a melt-processible composition comprising (i) thermoplastic polymer and (ii) layered montmorillonite clay having platelets with diameter ranging from 0.01 to 1 micron wherein the composition is used to form molded articles such as containers. There is also disclosed a method for decreasing the gas permeability of the thermoplastic material by using montmorillonite clay as disclosed above (page 1, lines 11-25, page 3, lines 3-5, page 11, line 19-page 12, line 4, page 13, lines 18-19, and page 16, line 6).

In light of the above, it is clear that WO 99/03914 anticipates the present claims.

8. Claims 1, 4, 6, 8, 10, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 98/29499.

WO 98/29499 discloses a melt-processible composition comprising (i) thermoplastic polymer and (ii) layered montmorillonite clay having platelets with diameter ranging from 0.01 to 1 micron wherein the composition is used to form molded articles such as containers. There is

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also disclosed a method for decreasing the gas permeability of the thermoplastic material by using montmorillonite clay as disclosed above (page 3, lines 25-27, page 5, lines 1-5, 9-10, and 15-19, page 6, lines 8-10, and page 19, lines 13-15).

In light of the above, it is clear that WO 98/29499 anticipates the present claims.

9. Claims 10 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Beall et al. (U.S. 5,830,528).

Beall et al. disclose a method for decreasing the gas permeability of a thermoplastic material such as polyolefin including polyethylene, polypropylene, and ethylene-propylene copolymer by using layered montmorillonite clay (col.8, lines 50-64, col.20, lines 27-29 and 54, and col.27, lines 15-21).

In light of the above, it is clear that Beall et al. anticipate the present claims.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claims 5 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 93/04118, Christiani et al. (U.S. 5,747,560), WO 99/03914, or WO 98/29499.

The disclosures with respect to WO 93/04118, Christiani et al., WO 99/03914, and WO 98/29499 in paragraphs 5, 6, 7, and 8 are incorporated here by reference.

The difference between WO 93/04118, Christiani et al., WO 99/03914, or WO 98/29499 and the present claimed invention is the requirement in the claims of beverage container closure or beverage container sealant.

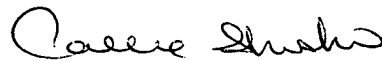
WO 93/04118, Christiani et al., WO 99/03914, or WO 98/29499 each disclose melt-processible composition which is used to form molded articles such as containers including beverage container, but none of the references specifically discloses that the articles are suitable for use as a closure or a sealant for such a container. However, given the generic disclosure of container by WO 93/04118, Christiani et al., WO 99/03914, or WO 98/29499 as well as the disclosure in each of the references that the compositions decrease gas permeability of thermoplastic material, it therefore would have been obvious to one of ordinary skill in the art to utilize the composition of WO 93/04118, Christiani et al., WO 99/03914, or WO 98/29499 in any portion of the container including closure or sealant layer as presently claimed, where it is important that gas permeability is decreased in order to preserve the beverage inside the container, and thereby arrive at the claimed invention.

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12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Callie E. Shosho whose telephone number is 703-305-0208. The examiner can normally be reached on Monday-Friday (6:30-4:00) Alternate Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 703-306-2777. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Callie E. Shosho
Examiner
Art Unit 1714

CS
January 24, 2003